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# THE WEAKNESS OF PEACE MACHINERY

by

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with the aid of the Research Staff of the Foreign Policy Association

## INTRODUCTION

THE Lytton commission of inquiry, which has been investigating the Sino-Japanese dispute over Manchuria,<sup>1</sup> will present its report to the Council of the League of Nations sometime this fall. It is probable that this body will refer the report to the Committee of Nineteen, which may present concrete recommendations to the Assembly. Dispatches forecast that the Lytton report will condemn the establishment of the state of Manchoukuo by Japanese arms.<sup>1a</sup> Apparently to give moral support to the League in acting upon the Lytton report, Secretary of State Stimson made a speech on August 8 in which he reiterated the "non-recognition" doctrine, and promised that the United States would consult with other powers in case violation of the Anti-War Pact is threatened. Japan, on the other hand, has indicated that it will accept no recommendations of the Lytton commission which do not permit the recognition of Manchoukuo. On August 25, Count Uchida, Japanese Minister of Foreign Affairs, declared to the Diet:

"The Japanese Government are convinced that recognition of this new State is the only means of stabilizing conditions in Manchuria and of establishing permanent peace in the Far East." The Japanese people could never consent to any solution which would invest "China proper in one form or another with authority over Manchuria . . ."<sup>2</sup>

Japan has thus challenged the United States and the League of Nations, and this challenge must be met when the Lytton report is presented. In view of these developments, it is believed highly important<sup>2a</sup> that the United States send a strong delegation to participate in the forthcoming sessions of the Council and the Assembly. Having urged the Lytton commission and the League to take a firm position, indirectly at least, the United States, it is argued, cannot now leave the League in the lurch by adopting a policy of aloofness.

In considering what action to take on the Lytton report, the League and the United

States will be confronted by at least three alternatives:

First, they might attempt to save the face of Japan and peace machinery by reiterating the doctrine that no situation established in violation of the Anti-War Pact or the Covenant shall be "recognized," but by not applying this doctrine to Manchoukuo. In other words, they might refrain from expressing the view that Manchoukuo had been established in violation of these agreements. Thus Japan would escape moral condemnation and each power would retain its discretion as to recognizing Manchoukuo in the future. Although such a solution would probably prevent Japan from withdrawing from the League, some supporters of peace machinery believe that it would make a laughing stock of the Covenant and the Anti-War Pact. They ask how the League and the United States could possibly justify arousing worldwide "moral indignation" against Japan, if they are unwilling now to declare that Japan has violated any of its international obligations.

Second, the League and the United States might attempt to bring further "moral pressure" to bear against Japan by formally expressing the opinion that Manchoukuo has been established by Japanese arms in violation of the Anti-War Pact and the Covenant and therefore cannot be recognized, and by the withdrawal of diplomatic representatives from Tokyo. Some observers declare, however, that these measures would do more harm than good unless the world is willing to support them by the imposition of sanctions—the third alternative.

Before the establishment of peace machinery, the object of diplomacy was to localize a war and bring it to an end as quickly as possible. But under the present system of "peace machinery" it is contended that the protracted "moral pressure" of world opinion, without any clear-cut decision as to whether a state has violated its obligations, merely serves to prolong and intensify ill-will in a country such as Japan, and perpetuate a general feeling of insecurity. After a certain point the world must make good its

1. T. A. Bisson, "The New State of Manchoukuo," *Foreign Policy Reports*, Vol. VIII, No. 8, June 22, 1932.

1a. Cf. Byas dispatch, *New York Times*, August 28, 1932; also Abend dispatch, *ibid.*

2. *New York Times*, August 25, 1932.

2a. Cf. "Progress at Geneva," *The Nation*, August 10, 1932.

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moral protests, or stop protesting. In other words, the League and the United States must decide whether to adopt an attitude of complete non-intervention or to bring this dispute to a head by the imposition of sanctions. The nature of sanctions would depend on whether Japan merely limits its military occupation to Manchuria or whether it embarks this fall on new campaigns into Jehol, Peking, Tientsin and Shanghai, as rumored in the press. In the former case, sanctions might be limited to an international embargo against foreign loans to Manchoukuo. In the latter case, a land embargo by League members and the United States on imports from and exports to Japan might be imposed; or as an alternative Japan might be expelled from the League in accordance with paragraph 4 of Article XVI of the Covenant. It is declared that had the League and the United States been willing to apply sanctions last October, the mere threat would have been sufficient to forestall the present situation—a situation which endangers the very existence of world organization. On the other hand, it is declared that if the League and the United States are still unwilling to impose sanctions, they must wash their hands of the Sino-Japanese dispute, thereby admitting that peace machinery is ineffective in settling a major international difficulty. If such an admission is made, the difficulties in securing armament reduction will be greatly increased. Is there not a danger, moreover, that if Japan is allowed to continue its present course, war between Japan and China is sooner or later inevitable—a war into which both Russia and the United States may be drawn?

A recent issue of *Foreign Policy Reports* summarized the outstanding facts in the Sino-Japanese dispute.<sup>3</sup> Upon the basis of those facts, the present report will examine the gains and losses registered by world peace machinery during this dispute. It will endeavor to determine, from both the legal and the political points of view, why this machinery was not effective in preventing an armed struggle between Japan and China—a struggle which has resulted, temporarily at least, in the loss of Manchuria to China.

World peace machinery today consists of the Permanent Court of International Justice (fortified by a large number of arbitration and conciliation agreements), the League of Nations, and the system of concerted diplomatic pressure being developed under the Anti-War Pact.

The Permanent Court is a judicial body which applies international law to a dispute placed before it and determines whether a

breach of the law has occurred and the reparation that shall be made. Inasmuch as many of the issues between Japan and China involved the interpretation of the Manchuria treaties,<sup>3a</sup> the Permanent Court provided an adequate means for settlement of the legal aspects of the dispute. Had the Permanent Court rendered a judgment in favor of Japan, and had China been unable or unwilling to give effect to the award, the League Council undoubtedly could have authorized Japan to resort to reprisals.<sup>4</sup> Had Japan based its military action in Manchuria on a judgment of the Permanent Court, it would have won the moral support of international organization and world opinion. Since it had not accepted the Optional Clause of the Court Statute, however, Japan was not bound to submit its dispute to the Permanent Court, and it rejected China's offer of arbitration in this case—apparently because of its traditional opposition to arbitration,<sup>4a</sup> and the fear that an international court might declare the Manchuria treaty of 1915 invalid.

Since the Sino-Japanese dispute involved not only the interpretation of treaties but certain "political" questions, the League of Nations offered a more flexible procedure of pacific settlement than the Permanent Court. Unlike the Court, the League of Nations and the Anti-War Pact operate primarily through political conciliation and diplomatic pressure. Acting under these instruments, the world urges the two disputants to settle their difficulty peacefully, and in the first instance makes no effort to determine whether the disputants have violated their international obligations.<sup>5</sup> In fact, in the case of the Anti-War Pact, no machinery for this purpose exists. The Covenant of the League of Nations goes further than the Anti-War Pact in providing that if mediation fails the League shall present a formal recommendation as to settlement of a dispute and impose sanctions against a state which resorts to war against the party complying with the recommendation. The Anti-War Pact, on the other hand, renounces all war "as an instrument of national policy," but without defining what is meant by this phraseology

3a. T. A. Bisson, "Basic Treaty Issues in Manchuria between Japan and China," *Foreign Policy Reports*, Vol. VII, No. 21, December 23, 1931.

4. Cf. Covenant of the League of Nations, Article 13, par. 4; also Schücking and Wehberg, *Die Satzung des Völkerbundes* (Berlin, Verlag von Franz Vahlen, 1924, 2nd ed.), p. 533; R. Redslob, *Théorie de la Société des Nations* (Paris, Rousseau, 1927), p. 58.

4a. It appears that Japan has submitted to arbitration only one international dispute—the Japanese House Tax of 1905—and is today a party to but one general arbitration treaty—that with Switzerland of 1924, which exempts vital interests from arbitration. Cf. League of Nations, *Treaty Series*, Vol. XIII, p. 395; also M. Habicht, *Post-War Treaties for the Pacific Settlement of Disputes* (Cambridge, Harvard University Press, 1931), p. 193.

5. For the difference between the "directive" and "judicial" functions (fonctions contentieuses) of the Council, cf. A. H. Philipse, *Le Rôle du Conseil de la Société des Nations dans le Règlement Pacifique des Différends Internationaux* (The Hague, Nijhoff, 1928), Chap. I.

3. John C. deWilde, "The League and the Sino-Japanese Dispute," *Foreign Policy Reports*, Vol. VIII, No. 10, July 20, 1932.

or establishing any tribunal to apply this obligation in a given dispute.

The provisions of both the League Covenant and the Anti-War Pact were brought to bear against China and Japan in the present controversy.

During the Sino-Japanese dispute the League Council exercised merely its conciliatory powers; it did not attempt to exercise its semi-judicial and semi-executive authority under Articles XV and XVI of the Covenant. Likewise, it was by mediatory pressure rather than semi-judicial action that the Assembly assisted in bringing about the evacuation of Shanghai by Japan.

As a result of this conciliatory action, a number of constructive achievements are claimed for the League during the Sino-Japanese dispute. It is a striking fact that no government represented in the Council or the Assembly openly defended the action of Japan in Manchuria or Shanghai. Predominant opinion, as a result of the operation of peace machinery, seemed to condemn Japan for the methods it employed in settling its dispute with China. It is contended, to quote a spokesman of the Japanese Foreign Office, that the evacuation of Shanghai following pressure from the Assembly was a sign of respect for "world opinion."<sup>6</sup> Neither China nor Japan, moreover, declared "war." Had war been declared, Japan's military operations and political demands might have been much more extensive, and Japan could have established a blockade and exercised other belligerent rights, to the detriment of trade.<sup>7</sup> It is declared that as a result of peace machinery Japan's aggressions have been localized—in contrast to the pre-war system, under which each great power might have utilized Japan's action as an excuse for seizing part of China for itself.<sup>8</sup> Finally, the acceptance of the non-recognition doctrine, under which League members and the United States declare that no situation created in violation of the Anti-War Pact and the Covenant shall be "recognized," is regarded as establishing a principle which will prevent a state from obtaining legal title to territory which it has seized by force, thus discouraging aggression in the future.<sup>9</sup>

As a result of these various gains, it is declared that world opinion is being mobilized against armed conflict, and that a web is

gradually being woven around the illegal use of force to such an extent that in the future a power will hesitate before imitating Japan's recent example. Admittedly the world attempted to restrict hostilities only by conciliatory pressure; admittedly the League did not invoke the judicial and executive powers vested in it by the Covenant. Nevertheless, during the present transitional stage between nationalism and internationalism it is argued that it is better to take a few indirect steps against war which the world will approve than to attempt drastic measures which will not be supported by certain nationalist powers. Too great haste in attempting to develop international organization might destroy the progress so far made.

#### CRITICISM OF PEACE MACHINERY

Some realistic critics declare, however, that in enumerating these so-called gains friends of peace machinery are merely rationalizing a serious defeat, and that governments are attempting to soothe their consciences for not taking more effective action. It is pointed out that China and Japan have not been embroiled in such bitter hostilities since the war of 1894. The Open Door diplomacy of the United States in 1900 was able to protect China from partition; it was only after the creation of the League and the Anti-War Pact that China lost Manchuria.<sup>10</sup> As for the non-recognition doctrine, these critics point out that neither the League nor the United States has formally declared that any of the acts of Japan violate the Covenant or the Anti-War Pact, that the powers therefore remain free to recognize the new state of Manchoukuo, and that some of them probably will do so following its recognition by Japan. They assert that unless the powers are willing to apply sterner measures against Japan, the non-recognition doctrine will not affect Japan's position in Manchuria, except to incite China to prepare for a new war.<sup>11</sup>

The application of peace machinery has been criticized from two opposing points of view. According to one view, the League should have accepted Japan's demand that its difficulties with China be left to "direct negotiation." Having achieved a definite military victory, Japan could afford to be moderate in its demands on China, whereas no Japanese government could

6. *New York Times*, May 12, 1932.

7. Whether war actually came into existence in this dispute is a matter for argument; for opposing views, cf. Sir John Fischer Williams, "Shanghai and Manchuria," *The Political Quarterly*, April-June 1932, and Quincy Wright, "When Does War Exist?" *American Journal of International Law*, April 1932.

8. Cf. the speech of Viscount Grey of Fallodon, "The League, Manchuria and Disarmament," *League of Nations Union*, No. 312A, December 1931.

9. This doctrine flows, in a sense, from Article X of the Covenant, although it makes no provision for sanctions. Cf. the Peruvian proposal denying League registration to any treaty imposed by force. *League of Nations, Official Journal*, 1930, Special Supplement No. 85, p. 114.

10. A French observer writes: "If the Hague conference had been in session in 1914, it would probably have been powerless. But nobody can imagine it going on sitting for three months and finally passing a resolution acquiescing in the German occupation of Belgium. How has it happened that such a moral contradiction should come about under the auspices of Geneva?" L. A. Zimmern, *Must the League Fail?* (London, Hopkinson, 1932), p. 10.

11. Cf. A. L. Lowell, "Manchuria, the League and the United States," *Foreign Affairs*, April 1932; R. L. Buell and John Dewey, *Are Sanctions Necessary to International Organization?* Foreign Policy Association, Pamphlet No. 82-83, June 1932, p. 13.



bow to an ultimatum from Geneva. After a struggle between Japanese military power and a Chinese economic boycott, the two governments could have worked out a compromise. It is contended that the intervention of the powers under the Covenant and the Anti-War Pact prevented such a settlement by increasing extremism in China, where false hopes of outside assistance were aroused, as well as in Japan, where any concession to Geneva was resisted as a matter of national honor.

#### INADEQUATE SUPPORT OF PEACE MACHINERY

A second criticism is that the League did not go far enough in exercising its power of conciliation or its more formal power of recommendation and restraint. Had the League and the United States taken a stronger stand in September and October of 1931, threatening to withdraw Ambassadors from Tokyo, the Japanese government would have held its own against the military party.<sup>12</sup> In the opinion of some observers, the Assembly, dominated by the smaller powers who had less to lose than the great powers from a clash with

Japan, exercised much greater pressure, and was much more desirous of upholding the Covenant and the Anti-War Pact than the Council.<sup>13</sup> The action of the Assembly, however, was too late to prevent the loss of Manchuria to China. Moreover, neither the Assembly nor the Council made formal recommendations to Japan or China under Article XV of the Covenant. Critics declare that as a result of using force, Japan has made the following gains: (1) the establishment of the state of Manchoukuo; (2) a chastened attitude on the part of the Chinese government, resulting in (a) failure to carry out abrogation of the extraterritorial rights of foreigners which had been announced for January 1, 1932,<sup>14</sup> and (b) temporary cessation of the anti-Japanese boycott. The failure of the League and the Anti-War Pact to prevent these *de facto* gains from aggression, it is contended, has increased a feeling of insecurity in the Orient and throughout the whole world, thereby making the reduction of armaments more difficult and setting back the entire movement for international cooperation.

### THE LEGAL DEFECTS IN PEACE MACHINERY

Assuming that the intervention of the League and the United States in the Sino-Japanese dispute resulted in some gains for peace, and that a policy of non-intervention would have placed China at the complete mercy of Japan in violation of the very principles upon which peace machinery is based, it is nevertheless apparent that the League of Nations did not succeed in restoring the *status quo* in Manchuria following the outbreak of hostilities, or even in preventing Japan from securing political gains as the result of the exercise of force. Legal and political factors are responsible for the failure of the League, in cooperation with the United States, to attain complete success. The chief legal difficulty which obstructed the functioning of the Covenant was uncertainty regarding the extent of Japan's obligations under that instrument, as well as uncertainty regarding the powers of the League. The chief political difficulties were the unusual situation in Japan and China, the resurgence of nationalism throughout the world, and uncertainty as to the attitude of the United States. The remainder of this report will be devoted to a discussion of these legal and

political obstructions to the functioning of peace machinery.

#### UNCERTAINTY AS TO THE EXTENT OF OBLIGATIONS

Perhaps the most important legal difference arose over whether the Covenant made a distinction between "war" and lesser acts of force in accordance with the distinction long recognized by international law.<sup>15</sup> Two direct restrictions on the use of force are imposed by the Covenant: a member must submit a dispute "likely to lead to a rupture" to investigation by the Council, and must "not resort to war" until at least three months after the Council reports. Even in this case, a member may not resort to war against a party which has complied with the recommendations of a unanimous report. Japan contended that it had not resorted to "war" with China, but had merely defended its interests in Manchuria under the right of self-defense. The Japanese government formally declared:

"Japan has participated unreservedly in the process of settlement provided for in the Covenant; it surely cannot be supposed that these methods exclude interim measures of self-defense

12. William Martin, "The League of Nations and the Far East," *Asia*, July-August, 1932; "A Student of the League," *Manchester Guardian*, January 21, 1932.

13. Felix Morley, *The Society of Nations* (Washington, Brookings Institution, 1932), Chap. XIV.

14. *New York Times*, May 5, 1931.

15. J. B. Moore, *A Digest of International Law* (Washington, Government Printing Office, 1906), Vol. II, Chap. XIII; E. C. Stowell, *International Law* (New York, Holt, 1931), p. 465; Clyde Eagleton, *International Government* (New York, Ronald Press, 1932); C. C. Hyde, *International Law chiefly as interpreted and applied by the United States* (Boston, Little, Brown, 1922), Vol. II, Part VI; P. Fauchille, *Traité de Droit International* (Paris, Rousseau, 1925, 8th ed.), Vol. I, Part III, p. 685 et seq.

which are interdicted by no resolution of the League . . . . It is a universally accepted axiom that all treaties of pacific settlement leave unimpaired the right of legitimate self-defense!"<sup>16</sup>

China, however, contended that "the use of armed force without submitting the entire matter to arbitration or judicial settlement and without awaiting the outcome of inquiry by the Council is in direct violation, not only of the spirit, but of the letter of the Covenant."<sup>17</sup>

#### THE CONTROL OF ACTS OF FORCE FALLING SHORT OF WAR

In forming an opinion on whether the Covenant merely forbids "war," in contrast to force employed for "self-defense" including armed intervention on foreign territory, the reader may be assisted by a brief historical analysis. At the Paris Peace Conference nearly all the drafts of the Covenant prohibited "resort to armed force." Nevertheless, the final text limited this prohibition to "war." The reason for the change is not revealed in the minutes.<sup>18</sup> In 1924 an amendment to the Geneva protocol, prohibiting not only war but also pacific occupation, was defeated, as were similar proposals to amend the Covenant made in 1930 and 1931.<sup>19</sup> France and Germany, on the other hand, mutually undertook in the Locarno security agreement of October 16, 1925 that they would "in no case attack or invade each other or resort to war against each other"—a provision generally regarded as a renunciation of the right to military occupation as well as war.<sup>20</sup> In the light of these unsuccessful proposals to strengthen the Covenant and in contrast to the wording of the Locarno agreement, it may be argued that at present the Covenant prohibits only those acts of force resulting in a state of war. Other commentators insist, however, that with the establishment of an adequate system of pacific settlement, the justification for resorting to armed self-help has come to an end and that

consequently the term "war" in the Covenant should be broadly interpreted to place all acts of military force under control.<sup>21</sup>

Although admitting the right of self-defense, the de Brouckère report to the Council in 1927<sup>22</sup> declared:

"Legitimate defense implies the adoption of measures proportionate to the seriousness of the attack and justified by the imminence of the danger. If a country flagrantly exceeded these limits, even if it were affronted by some incident of little intrinsic importance, it would become in actual fact the real aggressor . . ."<sup>23</sup>

Citing this statement, the First Committee of the 1931 Assembly declared that

"the use which a State claims to make of the right of self-defense is a matter which may be considered by the other States concerned and, in the case of Members of the League of Nations, is subject to the appreciation of the Council, particularly when there may be a question of applying Article XVI."<sup>24</sup>

In two cases prior to the Sino-Japanese dispute the League Council tended to apply the doctrine that acts of force, whether or not creating a state of war, should come under its purview. In the Corfu case of 1923 the Italian government informed the Council that its bombardment and occupation had no "hostile character," but

"was merely designed to assure obligations arising out of responsibility for a terrible crime [the murder of an Italian officer on Greek soil] . . . . The creation of the League of Nations does not constitute a renunciation by States of all right to act for the defense and safety of their rights and their dignity."<sup>25</sup>

In view of the doubts expressed as to whether Italy was thus justified in resorting to reprisals, the Council appointed a committee of jurists which reported in January 1924 that in its view

"coercive measures which are not intended to constitute acts of war may or may not be consistent with the provisions of Articles XII to XV of the Covenant, and it is for the Council, when the dispute has been submitted to it, to decide immedi-

16. League of Nations, "Reply to the Appeal of the Twelve Powers," Minutes of Sixty-Sixth Session of the Council, *Official Journal*, Part I, March 1932, p. 385. M. Sato declared: "My country, faced by a pressing danger, was bound to take temporary and provisional measures of self-defense." A.(Extra.)G.C. P.V.5. Cf. also Viscount Ishii, address before the Lytton commission, reprinted in *The Shanghai Incident, The League of Nations*, etc., compiled by the Rotary Club of Tokyo, 1932, p. 33; and Kikujiro Ishii, "The League and the Chinese Problem," *Contemporary Japan*, Vol. I, No. 1, June 1932.

17. M. Yen, League of Nations, *Official Journal*, Part I, March 1932, p. 337; also M. Munch, A.(Extra.)C.B. P.V. 3.

18. Cf. Article 7 of Wilson's first draft; Article 5, second draft; Article 5, third draft; Article 15, House's draft; Article 10, Cecil-Miller draft. On the other hand, Article 1 of the Phillimore plan and Chapter II of the British draft of January 20, 1919 merely prohibited "war." Cf. David Hunter Miller, *The Drafting of the Covenant* (New York, Putnam's, 1928), Vol. II, p. 3, 9, 14, 74, 100, 109 and 139; also Vol. I, p. 214.

19. These amendments arose in connection with the effort to bring the Covenant into harmony with the Anti-War Pact. League of Nations, *Official Journal*, 1930, Special Supplement, No. 85, p. 119, 120, 127; *ibid.*, 1931, Special Supplement No. 94, p. 75. Cf. also *Official Journal*, 1924, Special Supplement No. 24, p. 35.

20. Hans Wehberg, "Hat Japan durch die Besetzung der Mandschurei das Völkerrecht verletzt?" *Die Friedenswarte*, January 1932.

21. Cf. Professor Charles de Visscher, "L'interprétation du Pacte au Lendemain du Différend Italo-Grec," *Révue de Droit International et de la Législation Comparée*, Vol. V, p. 385; N. Politis, "Les Représailles entre Etats Membres de la Société des Nations," *Révue Générale de Droit International Public*, Vol. XXXI (1924), p. 14. Schücking and Wehberg, *Die Satzung des Völkerbundes*, cited, p. 509.

22. This report dealt primarily with the question of sanctions but laid great emphasis on the importance of Article XI of the Covenant. Cf. Mildred S. Wertheimer, "The League of Nations and Prevention of War," *Foreign Policy Association, Information Service*, Vol. VI, No. 11, August 6, 1930.

23. League of Nations, *Reports and Resolutions on the subject of Article XVI of the Covenant*, A.14.1927.V., p. 69.

24. League of Nations, *Records of the 12th Ordinary Session of the Assembly, 1931*, Special Supplement, No. 93, p. 221. Apparently the word "appreciation" is used in place of "application," "interpretation," "review," or "control," since there is doubt whether the Council can impose a binding interpretation of the Covenant on members. The reporter of the First Committee declared, "the right of legitimate defense is simply the application of . . . the principle that, when an agreement has been entered into on a bilateral or multilateral basis and one of the parties evades its obligations, the other parties are automatically released from theirs." *Ibid.*, p. 128. Cf. "Notstand," *Wörterbuch des Völkerrechts und der Diplomatie*, Vol. II, p. 152; and B. C. Rodick, *The Doctrine of Necessity in International Law* (New York, Columbia University Press, 1928).

25. League of Nations, *Official Journal*, November 1923, p. 1289.

ately, having due regard to all the circumstances of the case and to the nature of the measures adopted, whether it shall recommend the maintenance or the withdrawal of such measures."<sup>26</sup>

This opinion was criticized by a number of governments on the ground that it did not establish any criterion by which the validity of coercive acts could be judged; some expressed the belief that any reprisal was unjustified until after resort to the pacific procedure laid down by the Covenant.<sup>27</sup>

Although it accepted the report of the Corfu jurists, the Council subsequently indicated that it had no intention of adopting the opinions expressed as its own or imposing them upon the other League members.<sup>28</sup> Consequently this view that reprisals might be justified under the Covenant is not necessarily a valid interpretation of that instrument.

A similar question arose in 1925 when the Greek government invaded Bulgaria without declaring war, following the death of a Greek soldier at the hands of a Bulgarian. In justifying its action before the Council, the Greek representative asked if Greece did not have the right to resort to coercion to compel Bulgaria to pay reparation and withdraw its troops from positions in Bulgarian territory which threatened Greek security. In reply to this question, M. Briand made his famous utterance to the effect that it was essential that "the idea of legitimate defense should not take root in the minds" of League members. Through the Council and elsewhere, he added, the League "offered the nations a means of avoiding such deplorable events."<sup>29</sup>

In this case, following an investigation on the spot by the Humboldt commission, the Council adopted a report declaring that the Greek authorities were entitled

"to take within the Greek frontier all military measures which they considered the security of the country necessitated; but the Greek government should not have caused its armed forces to cross the Bulgarian frontier . . ." The Council believed in the "broad principle that where territory is violated without sufficient cause reparation is due, even if . . . at the time of the occurrence it was believed by the party committing the act of violation that circumstances justified the action."<sup>30</sup>

In declaring that territory had been violated in this case "without sufficient cause," the Council implied that in other cases "sufficient cause" might exist, but it was for the Council to pass upon the question, rather than each party alone.

26. *Ibid.*, April 1924, p. 524.

27. Cf. the statements of M. Branting (Sweden) and M. Guani (Uruguay), *ibid.*, April 1924, p. 526; also the replies of Finland, Greece, Hungary, the Netherlands, Norway, Salvador, Siam, Sweden, Switzerland and Uruguay, expressing their view of the Corfu opinion. League of Nations, *Official Journal*, April 1926, p. 600-612.

28. *Ibid.*, April 1926, p. 520.

29. *Ibid.*, November 1925, p. 1696.

30. *Ibid.*, February 1926, p. 173.

Had the Council applied these principles to the Sino-Japanese dispute, it would have attempted, before inquiring into the grievances of Japan against China, to form an opinion, through observations on the spot by a neutral commission, as to whether Japan had occupied Chinese territory for "sufficient cause." The Council, however, failed to establish such a commission. In its resolution of September 30, the Council noted the statement that Japan would withdraw its troops "in proportion as the safety of the lives and property of Japanese nationals is effectively secured." This statement was regarded by the Japanese as admitting that they were entitled to exercise the right of "self-defense," even to the point of armed intervention on foreign territory. The Council did not attempt to establish whether, in the given circumstances, the exercise of this "right" was justified. In thus tacitly admitting the right of armed intervention under the Covenant but failing to establish any control over the exercise of the right, the League Council, critics may declare, lost in the Sino-Japanese dispute much of the ground gained by its previous jurisprudence. They may contend that in this case the Council gave its sanction to private intervention and reprisals, whereas previously it had insisted on placing all such acts under its control.

A number of Latin-American governments, while accepting the League's action in the Sino-Japanese dispute, nevertheless support the principles of non-intervention, which were defined by M. Gonzalez-Prada, representative of Peru on the Council, as follows:

1. No state has the right to effect the military occupation of the territory of another in order to insure the execution of certain treaties;

2. No state is entitled to oblige another—having invaded its territory—to enter upon direct negotiations on the bearing and legal value of treaties previously existing between the two states;

3. The exercise of the right possessed by each state to insure the protection of lives and property of its nationals must be limited by respect for the sovereignty of the other state; no state being entitled, in order to provide such protection, to authorize its military forces to penetrate into the territory of the other for the purpose of carrying out police operations;

4. The fact that a state has certain rights, claims, economic concessions, etc., in regard to another state does not entitle the former to effect the military occupation of the territory or to seize the property of the debtor state. Any recovery of debts by compulsion is illicit, in accordance with the principles accepted by the Second Peace Conference (The Hague, 1907).<sup>31</sup>

Obviously, if a state may evade the restrictions imposed by the Covenant (and the Anti-War Pact) merely by refraining from

31. League of Nations, *Official Journal*, December 1931, p. 2382. The representatives of Guatemala and Panama supported this statement. At the Assembly, these principles were also endorsed by Bolivia, Colombia, Haiti, Mexico, Salvador, and Uruguay.



characterizing its military operations as "war," then the ends of peace machinery will be defeated. One of the great problems confronting the League (and the Anti-War Pact) is how to place all acts of force falling short of war under international control. There are several means by which this end could be accomplished.

First, an invaded state might declare, in appealing to the Council, that it regarded a given act of force as creating a state of war in violation of the Covenant. Should this declaration be accepted by the Council, thus bringing to the attacked state League support under Articles XV and XVI, it might solve the problem. In the absence of an effective sanctions system, however, such a pronouncement might merely expose the attacked state to more widespread attack. It might be wrongly assumed, moreover, that the state which recognized certain acts of force as creating a state of war was the "aggressor."

Second, all acts of force might be placed under control by an amendment to the Covenant to that effect, or by the ratification of the General Convention to Improve the Means of Preventing War, approved by the Assembly on September 26, 1931. This convention provides that if, in circumstances which in the Council's opinion do not create a state of war between two signatories, "the forces of one of those Powers enter the territory" of the other, "the Council may prescribe measures to ensure their evacuation by those forces," acting without the vote of the parties. The fact that only two states—Peru and Norway—have ratified this convention illustrates the difficulty of inducing governments to accept new obligations, especially during the present period of nationalism.

A third means of obtaining the objective of placing all acts of force under control is that followed in the Corfu and Greco-Bulgarian disputes—namely, of developing the present text of the Covenant by interpretation.

According to one view<sup>32</sup> Article XI of the Covenant, authorizing the League "to take any action that may be deemed wise and effectual to safeguard the peace" of nations in event of war or any threat of war, may be interpreted as giving the League authority to place all acts of force under its control. The issue under this Article is whether Japan, for example, has a legal obligation to accept the Council's recommendation, not as to settlement of its dispute with

China as such but as to "conservancy" measures, the adoption of which by the parties would restore the *status quo* and remove any threat of war.<sup>33</sup> The Council seemed to imply that it possessed the power to impose such measures on the parties when it adopted in December 1927 a report declaring that should either party disregard the recommendations of the Council as to the withdrawal of troops in a dispute threatening to lead to war, the Council might recommend the withdrawal of diplomatic representatives or even the inauguration of air or naval demonstrations.<sup>34</sup>

This implication, however, apparently was not supported by the Rutgers memorandum accepted by the Ninth Assembly.<sup>35</sup> This memorandum declared that Article XI "does not impose upon Members of the League any obligations which can be rigidly specified: the Council's action under this Article is political rather than judicial." The memorandum did not mention the possibilities of sanctions,<sup>36</sup> as had the Council report. The fact that the Assembly subsequently concluded the Convention to Improve the Means of Preventing War, authorizing the Council to take conservancy measures without the consent of the parties, may be cited as further evidence that under Article XI this power does not exist. During the Sino-Japanese dispute, Japan denied that it was under any obligation to accept the recommendations of the Council.<sup>37</sup> Confronted by the task of applying Article XI, the Council accepted the Japanese view—a decision which defeated the possibility of placing all acts of force under international control by means of this Article.<sup>38</sup>

Could this end have been attained by an interpretation of Article XV? Under this Article the parties agree "to submit any dispute likely to lead to a rupture" to the Council, and not to go to war for three months. Should the Council unanimously make a recommendation which one party accepts, the other party may not go to war. In the Sino-Japanese dispute, however, Japan declared that its dispute with China was not "likely to

33. For a review of the importance of conservancy measures, cf. Paul Guggenheim, *Les Mesures provisoires de Procédure internationale et leur influence sur le développement du Droit des Gens* (Paris, Sirey, 1931), particularly Chapter 6.

34. League of Nations, *Official Journal*, 1927, p. 833; also Philippe, *Le Rôle du Conseil de la Société des Nations dans le Règlement Pacifique des Différends Internationaux*, cited, p. 121.

35. League of Nations, *Official Journal*, May 1928, p. 675; Special Supplement, No. 63, p. 16.

36. Cf. Jean Ray, *Commentaire du Pacte de la Société des Nations* (Paris, Sirey, 1930), p. 389; also M. Gonsiorowski, *Société des Nations et Problème de la Paix* (Paris, Rousseau, 1927), Vol. II, p. 329.

37. League of Nations, "Reply to the Appeal of the Twelve Powers," cited.

38. Japan vetoed the League resolution of October 24. Cf. de Wilde, "The League and the Sino-Japanese Dispute," cited, p. 111. The president of the Council declared: "under the Covenant conservatory measures can only be adopted with the agreement of the parties." League of Nations, *Official Journal*, March 1932, Part I, p. 369.

32. Cf. T. P. Conwell-Evans, *The League Council in Action* (London, Oxford University Press, 1929), p. 55; Professor Lauterpacht, "Japan and the Covenant," *The Political Quarterly* April-June 1932; Wertheimer, "The League of Nations and Prevention of War," cited; Hans Wehberg, *Die Völkerbund-satzung* (Berlin, Hensell, 1929, 3rd ed.), p. 79.



lead to a rupture" and that therefore the Council had no jurisdiction.<sup>39</sup> Confronted by a similar question, the Corfu jurists<sup>40</sup> had expressed the view that under Article XV the Council was not bound to consider whether a given dispute was likely to lead to a rupture—an opinion which does not bind Japan. Nevertheless, if each party is free to withhold a dispute from the Council on the ground that it does not fall under Article XV, it will be able to defeat the League principle of compulsory mediation, except as embodied in Article XI.<sup>41</sup> Assuming that the Council may decide for itself whether a given dispute falls under Article XV, does it follow that Japan can be obliged under this Article to accept the recommendations of the Council as to the withdrawal of troops? The answer seems clear that under this Article Japan is under no obligation to accept any recommendation of the Council; it is merely obliged not to go to "war" should China accept. We return to the earlier conclusion that, confronted by the refusal of Japan to accept "conservancy measures," the Council has the alternative of regarding the armed intervention of Japan as constituting a state of "war" in violation of Article XV.

#### DOES ARTICLE X PREVENT INVASION?

In view of the manifest difficulties involved in this alternative, may not the Council achieve the same end—namely, of placing all acts of force under control—by the exercise of its power under Article X? This Article authorizes the Council to advise upon means for fulfilling the obligation to respect and preserve as against external aggression the territorial integrity and the existing political independence of each League member. In invading Chinese territory, did not Japan violate Article X, and should not the Council have acted to restrain the invasion? To China and to many other governments, any invasion of foreign territory apparently constitutes a violation of the integrity of that territory.<sup>42</sup>

Japan declared, however, that the Council would not have authorized it to retain its troops in Manchuria until the danger to its nationals had subsided had its occupation constituted a violation of Article X.<sup>43</sup> A number of commentators support this view by

declaring that armed invasion constitutes a violation of territorial integrity or political independence only if it results, or is intended to result, in annexation or the establishment of a lesser form of political control.<sup>44</sup> In support of this view, the fact may be cited that the Paris Peace Conference rejected a proposal to guarantee the "inviolability" of states.<sup>45</sup> According to this interpretation, the mere invasion of China by Japan does not constitute a violation of Article X. Only if this invasion results in the loss of territory to China, can Japan be charged with violating Article X. Apparently the League Council does not wish to determine whether the state of Manchoukuo owes its existence to Japanese arms or internal revolution<sup>46</sup> before receiving the report of the Lytton commission. In any case, Article X as thus interpreted does not constitute a bar to the resort to force but merely prevents such force from resulting in the acquisition, direct or indirect, of territory.

#### THE QUESTION OF UNANIMITY

Had the League attempted to apply Article X, Japan might have insisted that no action could be taken under this Article without its consent. Article V of the Covenant declares that "except where otherwise expressly provided in this Covenant . . . decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting." Article X authorizes the Council to advise upon the means by which the obligations of that Article shall be fulfilled, but does not "expressly except" the votes of the disputants, as is done in Article XV or in paragraph 4 of Article XVI—apparently the only two places in the Covenant where a specific exception to the unanimity rule is made. Does it follow, therefore, that the Council can take no action under Article X over the veto of Japan? If so, this Article loses its value, as do other Articles of the Covenant.<sup>47</sup>

To avoid such a result, the League might declare that the unanimity rule

39. M. Sato, *League of Nations, Official Journal*, March 1932, Part I, p. 340.

40. *League of Nations, Official Journal*, 1924, p. 324.

41. The phrase, "likely to lead to a rupture," is criticized on the ground that a party may deliberately attempt to aggravate a dispute in order to induce the Council to take jurisdiction. Ray, *Commentaire du Pacte*, cited, p. 403, 474.

42. Cf. M. Yen's invocation of Article X, January 29, 1932, *League of Nations, Official Journal*, March 1932, Part I, p. 337; also M. Benes, Special Session of the Assembly, A.(Extra.), C.G.: P.V.S.; M. Titulesco, *ibid.*, P.V.4. Cf. also Ray, *Commentaire du Pacte*, cited, p. 346.

43. *League of Nations, Official Journal*, March 1932, Part I, p. 344-5.

44. Cf. the Adachi-de Visscher report, *Annuaire de l'Institut de Droit International*, Vol. 30, 1923, p. 22 et seq.; J. C. Baak, *Der Inhalt des modernen Völkerrechts und der Ursprung des Artikels 10 der Völkerstatute* (No. 6, Völkerrechtliche Monographien, Berlin, 1926); also Gonsiorowski, *Société des Nations et Problème de la Paix*, cited, Vol. II, p. 273.

45. Schücking and Wehberg, *Die Satzung des Völkerbundes*, cited, p. 459. If Article X prohibited all acts of force, the "gap" in the Covenant authorizing certain types of war would be meaningless, and even international sanctions might be prohibited. As a result of Article X, however, even a "legal" war may not result in the annexation of territory.

46. This article guarantees territorial integrity only against "external aggression" and not internal revolution.

47. Thus Article XI authorizes the League to take any action to safeguard peace: Article XIII requires the Council to propose what steps shall be taken to give effect to unobserved arbitral awards; Article XVI imposes upon the Council the duty to recommend what military measures the League members should contribute against an aggressor; but in none of these cases is any exception to the unanimity rule made.

does not apply to "proposals" or "recommendations" of the Council, such as it is authorized to make under Article X, in contrast to a "decision." The First Assembly made such a distinction, deeming itself authorized to adopt a recommendation by a majority vote.<sup>48</sup> This action, however, has been criticized on the ground that since the League is not a super-state, its whole procedure rests upon recommendations to member states, instead of upon "decisions" *ipso facto* binding such states.<sup>49</sup> Second, the League might interpret these articles in accordance with the legal principle that no one should be a judge in his own suit. Since the application of the unanimity rule to these articles would defeat their purpose, the votes of the two parties should by implication be excluded.<sup>50</sup>

#### INTERPRETATION OF THE COVENANT

It is evident, therefore, that the most important Articles of the Covenant are susceptible of different interpretations. Confronted with the necessity of applying the Covenant in a given case, may the League adopt an interpretation over the veto of an interested party? For example, may the League Coun-

cil decide, over the veto of Japan, to accept a broad interpretation of Articles X or XV? The Covenant is silent as to the power of interpreting its provisions, and hitherto it had been assumed that each League member interpreted the meaning of the Covenant for itself.<sup>51</sup> If such a view were correct, Japan could prevent the Council or the Assembly from applying Article XV to its dispute with China, thus defeating the very purpose of the Covenant.<sup>52</sup>

Recognizing this difficulty, a number of commentators declared that while unanimity is necessary for a general interpretation of the Covenant, the Council and the Assembly in a given case must have the authority to interpret those Articles of the Covenant with the application of which they are definitely charged.<sup>53</sup> This view finds support in an opinion of the Permanent Court in 1923, stating that when acting under the Minority treaties it was essential that the Council "should be competent, incidentally, to consider and interpret the laws or treaties on which the rights claimed to be infringed are dependent."<sup>54</sup>

### POLITICAL OBSTACLES TO THE PREVENTION OF WAR

As this discussion indicates, a wide difference of opinion exists over the meaning of the Covenant. In view of these differences, Japan was able to argue that it had not violated its obligations, while the League Council could escape the responsibility of declaring that Japan had done so. Nevertheless, had the Council members wished to do so, they could have proceeded to apply this interpretation against Japan. Why, therefore, did not they express the view that Japan had violated what they considered the obligations of the Covenant?<sup>55</sup> It is believed that the reasons were largely political: considerations of national policy inevitably colored the interpretation given the Covenant by each power.

It is generally agreed, moreover, that effective operation of peace machinery depends on the existence of responsible governments, which were absent in both Japan and China. Japanese civilian officials repeatedly made promises to the League and the United States, only to see them broken by officers in the field. The military clique soon came to dominate the Tokyo government completely, rigorously repressing any internal opposition. China, on the other hand, had for many years been disorganized, and Nanking had only nominal authority over Manchuria. It was difficult for the League to adopt a too literal interpretation of China's "independence," since for nearly a century China had ceded varying degrees of jurisdiction to foreign powers through the system of extritoriality and concessions, and since foreign

48. League of Nations, *Minutes of the Plenary Session, First Assembly*, p. 530 *et seq.*; *Minutes of the First Commission, Second Assembly*, p. 178; *Minutes of the Plenary Session, Second Assembly*, p. 895.

49. Cf. Sir John Fischer Williams, *Chapters in Current International Law and the League of Nations* (London, Longmans, 1929), Chap. XIII.

50. In determining whether the Council needed to count the votes of Turkey and Great Britain in the Iraq boundary dispute, the Permanent Court adopted this rule of qualified unanimity. *Collection of Advisory Opinions, Series B*, No. 12, p. 29, 32. Two prominent League statesmen, Lord Cecil and M. Scialoja, have expressed the view that the reason the votes of the parties were not excluded directly under these articles was sheer oversight. Lauterpacht, "Japan and the Covenant," cited.

51. Williams, *Chapters in Current International Law*, cited, p. 448; Schücking and Wehberg, *Die Satzung des Völkerbundes*, cited, p. 566.

52. In a statement to the Associated Press, Foreign Minister Yoshizawa declared: "Japan has been able through her membership in the Council of the League of Nations to put a brake upon precipitate action which she could have done in no other manner . . . It would be the height of folly to abandon so favorable a position." (*New York Times*, February 22, 1932.)

53. MM. Motta and Erich, quoted by Ray, *Commentaire du Pacte*, p. 44. Cf. also P. J. Walp, *Constitutional Development of the League of Nations*, p. 109. Professor Lauterpacht states that a juridical consequence of accepting the obligations of the Covenant "is the right and duty of the organs of the League to evolve an effective legal judgment on the question of whether recourse to force has been in accordance with the obligations under the Covenant." "Japan and the Covenant," cited.

54. *Collection of Advisory Opinions, Series B*, No. 6, p. 25. Cf. also Felix Morley, *The Society of Nations*, cited, p. 424.

55. The nearest approach to charging that Japan had violated its obligations was contained in the unofficial Appeal of the Twelve Neutral Members of February 16, 1932, in which regret was expressed that Japan had not found it possible to make full use of the methods of peaceful settlement provided in the Covenant. The Marquess of Londonderry, British representative at the Council, however, declared: "That appeal contained no indictment; it embodied no judgment; it was an appeal to the strength and honour of Japan." League of Nations, *Official Journal*, March 1932, p. 369.

powers had frequently intervened in China in the past. Public opinion in every country had much sympathy for the underlying grievances of Japan against China—whose government had been accused of attempting to undermine Japan's treaty rights in Manchuria—and for the economic difficulties of Japan. In many quarters this sympathy seemed to obscure the fact that Japan did not employ pacific means of settling its grievances and that, in the eyes of many observers, it committed acts out of all proportion to the offenses of which it complained.

### RESURGENCE OF NATIONALISM

When the Mukden incident occurred in September 1931 the world was in the grip of an unprecedented depression which had led every government to concentrate its attention on internal problems and to resort to tariffs and other nationalist remedies which injured foreign countries. Moreover, vital differences arising out of the peace treaties still prevented the great powers from presenting a common front in upholding the Covenant. Partly as a result of the depression, power had been assumed in some countries by conservative governments which may have been skeptical of the value of international cooperation and may also have harbored a secret desire of engaging in future interventions similar to that of Japan. Supporters of the National Government in Great Britain, looking back to the days of the Anglo-Japanese Alliance, openly defended Japan.<sup>56</sup>

Despite its professed attachment to the League, the French government was noticeably reluctant to act against Japan; and charges were made that France and Japan were bound by a secret understanding.<sup>57</sup> Although the existence of such an understanding was denied,<sup>58</sup> it was declared that from the nationalist point of view France and Japan had much in common. Japan and France both posed as guardians of peace and order—one in Asia and the other in Europe—and as defenders of treaties, which in some cases the other parties had accepted under duress. With the termination of the Anglo-Japanese

Alliance in 1922 and the growth of Anglo-American cooperation, it was natural for France and Japan to seek an entente, particularly in view of France's interest in maintaining its position in Indo-China.<sup>59</sup>

### THE DIFFICULTY CREATED BY ARTICLE XVI

Nationalist considerations increased the difficulty of applying Article XVI, providing for economic and military sanctions against any state illegally going to war.<sup>60</sup> Had the League members undertaken literally to apply this Article against Japan, they would have been bound to embargo Japan's foreign trade, including that with Soviet Russia and the United States. According to some critics, no government could be expected to apply such sweeping obligations; these critics believe that Article XVI should be amended, to establish a system of qualitative and progressive sanctions.<sup>61</sup> Despite the efforts of the 1921 Assembly, grave doubts existed as to the powers of the Council and the general procedure to be followed under Article XVI.<sup>62</sup> Moreover, many pacifists believed that the idea of sanctions was fundamentally unsound, while certain governments opposed economic sanctions on the ground that their trade would be injured as much as that of Japan, and that sanctions might involve them in war—a war not on behalf of nationalist interests but peace machinery.<sup>63</sup> All these considerations dissuaded the great powers from seriously considering the application of sanctions; this unwillingness, in turn, made them draw back from expressing the view that Japan had violated its obligations.

### UNCERTAINTY AS TO THE ATTITUDE OF THE UNITED STATES

The efforts of the League in conciliating the Sino-Japanese dispute were obstructed not only by uncertainty as to whether the United States would insist upon trading with Japan should a League blockade be applied, but also by the question of whether the United States would cooperate with the League in its purely conciliatory efforts. Although

59. In May 1932 France and Japan signed a commercial agreement. Cf. Constantine Brown, "French Politics in the Far East," *Asia*, May 1932.

60. Article XVI, paragraph 1, reads as follows: "Should any Member of the League resort to war in disregard of its covenants under Articles XII, XIII or XV, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not."

61. John Foster Dulles, *Annals of the American Academy of Political and Social Science*, July 1932; also, *Boycotts and Peace*, edited by Evans Clark (New York, Harpers, 1932), p. 17.

62. Cf. Sir Anton Bertram, "The Economic Weapon as a form of Peace Pressure," *Proceedings of the Grotius Society*, 1931, Vol. 17, p. 170.

63. For a criticism of sanctions, cf. Professor Dewey, in Buell and Dewey, *Are Sanctions Necessary to International Organization?* cited; and Sir Austen Chamberlain and Sir John Simon, *House of Commons Debates*, March 22, 1932.

56. *The Morning Post*, *The Daily Express*, *The Daily Mail*. Cf. Kingsley Martin, "Public Opinion: Shanghai in the British Press," *The Political Quarterly*, April-June 1932, p. 281; also, "A Student of the League," *Manchester Guardian*, January 25, 1932.

57. Cf. the article by W. H. H. Roth, *New York American*, June 12, 1932, stating that in return for French support in Manchuria and Inner Mongolia, Japan would support France in acquiring Yunnan and in its armament policy at Geneva. It was also charged that the Paris press was heavily subsidized by the Japanese government. Cf. the Japanese statement at the Special Assembly, A.(Extra)C.G., P.V. 2; and G. Scelle, "Philosophie Provisoire du conflit Sino-Japonais," *La Paix par le Droit*, April 1932, p. 161. When M. Yoshizawa, Japanese Ambassador at Paris who defended the Japanese position before the Council, resigned to become Foreign Minister in the Inukai government, he was decorated by the French government with the Grand Cross of the Legion of Honor. Upon leaving Paris, he declared that he had been profoundly touched by the numerous expressions of sympathy, and that real progress had been made in establishing a sense of solidarity between Japan and France. *Le Temps*, December 28, 1931.

58. Ambassador Claudel, *New York Times*, February 2, 1932.



the United States soon indicated that it was prepared to support the Anti-War Pact, uncertainty persisted as to the extent and manner of cooperation between Washington and Geneva. The relationship of the United States to peace machinery, including sanctions, is of such importance that it cannot be discussed here, but will be reserved for a subsequent report.<sup>64</sup>

Had the Covenant expressly prohibited all acts of force, League members could not have escaped a clear-cut decision in the Sino-Japanese dispute, without repudiating peace machinery. From the legal point of view, therefore, it may be desirable to clear up

and make more precise the obligations of the Covenant. It is pointed out, however, that desirable as this change ultimately may be, it cannot be brought about so long as the national policies of the great powers are inconsistent with the principles of international cooperation. The real effectiveness of international organization depends upon the loyalty of the states undertaking to support it. If this loyalty is present, existing peace machinery may be adequate for its purpose; if it is absent, the rephrasing of the Covenant will only make more glaring the inconsistency between international pledges and existing national policies.

### IS PEACE MACHINERY AN ADEQUATE SUBSTITUTE FOR WAR?

It is believed that the success of peace machinery in abolishing war will depend upon its ability to provide other means of satisfying legitimate national interests. Although Japan declared that its intervention in Manchuria was due to a desire purely to enforce existing international rights, subsequent events led to the belief that Japan had really employed force to secure greater economic privileges in Manchuria than it was entitled to under existing treaties and international law. One of the most over-populated countries in the world, Japan needs foreign markets where it may sell manufactures and buy raw materials. Had Japan placed this vital need before the League Council or the Permanent Court, neither body could have done anything effective to meet the need. Neither the League nor the Court is an international legislature. Can the League of Nations succeed in abolishing the right of self-help so long as it does nothing to bring about the international development of the world's resources to prevent some nations from starving while other nations are surfeited? If peace machinery merely protects the *status quo*, it may prove to be an instrument which assists the economically strong powers, many of whom secured their present territory by means of force before the days of the Anti-War Pact, in preserving their present wealth from attack by impoverished powers.

While admitting that many international maladjustments still exist, other students declare that just as in municipal society the right of self-help disappeared long before individual and social justice (which is a changing conception) was achieved, so in international society the abolition of war cannot await the coming of an international millennium. In the present complicated international structure, the attempts of the great powers to solve their economic problems by forcibly seizing foreign territory will cause the collapse of the structure on which civilization now rests, thus injuring the interests

of the great powers. Moreover, the possibility of using force creates a morbid and unrealistic psychology which prevents a nation from employing rational means in solving its economic difficulties. Last September the economic situation of Japan was serious, but not more so than in many countries of Central Europe which did not go to war as a solution: the temptation to attack China, however, led Japanese leaders to exaggerate the seriousness of Japan's internal situation and the possibility of remedying it by military action. Despite the attacks on Manchuria and Shanghai—and partly because of these attacks—the economic and financial situation in Japan has steadily deteriorated. According to this view, international organization is therefore justified in demanding that the use of unilateral force come to an end; but it remains under the obligation to develop other means of satisfying economic needs.

It is also declared that if peace machinery is to succeed in abolishing war, it must devise methods of peacefully revising treaties which may be "legal" but which clearly have become inequitable. Had its diplomacy been more skillful, Japan probably could have succeeded in securing the aid of the League in enforcing its Manchuria treaties against China. The Chinese people, however, declare that these treaties were originally imposed by force and violate their fundamental economic and political interests. In this instance, the task before peace machinery is to work out an equitable compromise between the economic needs of Japan and the economic and political interests of China. For this purpose, Article XIX of the Covenant, authorizing the Assembly to "advise the reconsideration by Members of the League of treaties which have become inapplicable, and the consideration of international considerations whose continuance might endanger the peace of the world," could be developed.

64. Soviet Russia creates a similar problem. For some reason the League Council failed to invite Russia to associate itself with the Council in maintaining peace in the Orient.